

FILED

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION**

MAR 28 2012

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

INDACON, INC.,
Plaintiff,

v.

FACEBOOK, INC.,
Defendant.

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Cause No. SA-10-CA-00966-OLG

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION

On this date came on to be considered the memorandum and recommendation (docket no. 79) of United States Magistrate Judge John W. Primomo in which he recommends denying the defendant's motion for summary judgment (docket no. 40). Additionally before the Court are the objections filed by the defendant (docket no. 92) and the plaintiff's response thereto (docket no. 99). When a party objects to a memorandum and recommendation, the Court must make a *de novo* determination of those portions of the report or proposed findings or recommendations to which objection is made. *Kreimerman v. Casa Veerkamp*, 22 F.3d 634, 646 (5th Cir. 1994); 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b).

Here, the motion for summary judgment was based on defendant's allegation that claims 1-4 of the '276 patent held by plaintiff were invalid due to their indefiniteness. *See Halliburton Energy Servs., Inc. v. M-I, LLC*, 514 F.3d 1244, 1249-50 (Fed. Cir. 2008) (noting that valid patent claims must be definite so that "a skilled artisan [will be able to] discern the boundaries of the claim based on the claim language, the specification, and the prosecution history, as well as her knowledge of the relevant art area").

The Court has conducted an independent review of the entire record, a *de novo* review of the matters raised by the objections, and has reviewed the applicable law. The Court concludes that defendant's objections relating to the Magistrate Judge's recommendation to deny summary judgment lack merit, and that they are **OVERRULED**. The Court further concludes that the memorandum and recommendation is **ACCEPTED** pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b). Accordingly, it is **ORDERED** that defendant's motion for summary judgment (docket no. 40) is **DENIED**.

However, in so far as disputed facts were outlined by the Magistrate Judge in his "Factual History," the Court finds that those facts are unnecessary to the Court's denial of summary judgment. Therefore, to the extent the memorandum and recommendation purports to make findings on any factual issues outside the scope of the definiteness of the patent claims, the defendant's objection is **SUSTAINED** and the Court declines to adopt those findings.

SIGNED this 28 day of March, 2012.


United States District Judge Orlando L. Garcia